

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested. Claims 1-26 are pending in the present application, claims 1, 9, 15, and 21 being independent. Claims 1-4, 8-11, 15-17, and 21-22 have been amended.

**Claim Objections**

Claims 1-8 stand objected under 37 C.F.R. § 1.75 for alleged informalities. In particular the Examiner has indicated that referral to “a mobile unit” on line 4 of claim 1 should be “the mobile unit.” Applicants direct the Examiner’s attention to amended claim 1 where “a mobile unit” is no longer referred to. Thus, rendering the Examiner’s objection moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the claim objection.

**Prior Art Rejections****1. Rejection under 35 U.S.C. § 102 (e) based on *Rommel et al.***

Claims 1-6, 8, 9, 12, 13, 15, 18, and 21-25 stand rejected under 35 U.S.C. §102(e) as being anticipated by Love et al. (U.S. Patent No. 6,034,971). This rejection is respectfully traversed.

Love is directed to a method for controlling the communication system forward link capacity by receiving gain information from at least one forward link, comparing the gain information with a gain threshold, and based on

the comparison, adjusting an encoding rate of at least one of the forward links (Love, col. 3, ll. 11-19).

Love addresses the signal interference by adjusting the forward link encoding rate (R) (Love, col. 4, ll. 56-57). The forward link signal received at the mobile station is maintained at a level to provide adequate frame error rates at the mobile station (Love, col. 4, ll. 57-60). At the same time a gain, that was decided to be adequate to overcome the interference, is scaled by a factor (r) that is proportional to the square root of the new and previous encoding rate (Love, col. 4, ll. 60-64). Love states that dropping the encoding rate (R) allows a drop in gain in the forward link and as a result less interference is created (Love, col. 5, ll. 1-8). Thus when a mobile station detects poor frame error rate, it requests a higher gain setting for its associated forward link signal.

Therefore, Love addresses the interference problem by changing the channel encoding rate, which results in a power decrease when a gain value is greater than a set threshold level. In Love the gains are related to the power, which is related to the energy per chip multiplied by chip rate  $R_c$  (Love, col. 4, equation 2). Claims 1, 9, 15, and 21 set an initial power level in a forward link based on an interference measure.

Thus, Love fails to show, suggest, or teach setting the initial power level in a forward link based on an interference measure. Love changes the encoding rate, which results in an incidental power decrease.

For anticipation under 35 U.S.C. § 102 “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)(M.P.E.P. 2131). For reasons stated above applicants assert that all of the elements of claims 1, 9, 15, and 21 fail to be set forth in the embodiment shown in Love and, thus, Love fails to anticipate claims 1, 9, 15, and 21.

Applicants have already explained why Love fails to teach or suggest the invention of independent claims 1, 9, 15, and 21. Since claims 2-6, 8, 12, 13, 18, and 22-25 each depend, either directly or indirectly, from one of claim(s) 1, 9, 15, and 21, claims 2-6, 8, 12, 13, 18, and 22-25 are allowable at least for the reasons generally expressed above with respect to claim(s) 1, 9, 15, and 21.

If this rejection is maintained, Applicants respectfully request that the Examiner indicate with specificity, where each claim feature is allegedly shown in the prior art.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under 35 U.S.C. § 102(e) based on Love.

2. Rejection under 35 U.S.C. § 103 (a) based on Love in view of Nakano

Claims 10, 11, 16, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Love in view of Nakano et al. (U.S. Patent No. 5,559,789). This rejection is respectfully traversed.

As set forth on pages 8-9 of the Office Action, the Examiner relies on Nakano to teach all the incremental features of claims 10, 11, 16, 17, and 19. Applicants submit, however, that the Office Action fails to make a *prima facie* showing that Nakano renders dependent claims 10, 11, 16, 17, and 19 unpatentable.

Nakano is directed to a method for controlling a mobile unit's power transmission, where a base station includes a pilot signal generating circuit for generating a pilot signal that has a constant transmission power level and where the mobile units include a pilot signal reception level measuring circuit for measuring reception power of the received pilot signal. The mobile units have a transmission power control circuit for controlling transmission power of a power amplification circuit based on the measured reception power of the received pilot signal (Nakano, Abstract). Thus, Nakano fails to show, suggest or teach setting the initial power level in a forward link based on an interference measure as recited in independent claims 9 and 15.

To establish a *prima facie* case obviousness under 35 U.S.C. § 103, the Examiner has the burden of meeting the following three basic criteria: (1) the prior art must teach or suggest all of the claim limitations; (2) there

must be a reasonable expectation of success; and (3) there must be some suggestion or motivation, either in the art or knowledge generally available to one of ordinary skill in the art to modify the reference or to combine teachings (M.P.E.P. § 2143)(emphasis added).

Applicants have already explained why Love fails to teach or suggest the limits of independent claims 9 and 15. Additionally, Nakano fails to teach or suggest the lacking features in Love. Therefore, since claims 10, 11, 16, 17, and 19 each depend, either directly or indirectly, from one of claims 9 and 15, claims 10, 11, 16, 17, and 19 are allowable at least for the reasons generally expressed above with respect to claims 9 and 15 with respect to Love.

Accordingly applicants respectfully request reconsideration and withdrawal of the outstanding rejection of claims 10, 11, 16, 17, and 19 under 35 U.S.C. § 103(a).

### 3. Rejection under 35 U.S.C. § 103 (a) based on Love in view of Meidan

Claims 7, 14, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Love in view of Meidan et al. (U.S. Patent No. 5,193,102). This rejection is respectfully traversed.

As set forth on pages 10-11 of the Office Action, the Examiner relies on Meidan to teach all the incremental features of claims 7, 14, and 26. Applicants submit, however, that the Office Action fails to make a *prima*

*facie* showing that Meidan renders dependent claims 7, 14, and 26 unpatentable.

Meidan is directed to an apparatus containing an estimator means for estimating the carrier to interference power ratio of a slow frequency hopping signal by using input data samples of the hop to estimate carrier to interference power ration with a metric at least comprising a monotonically related function (Meidan, col. 18, ll. 36-47). Meidan fails to show, suggest or teach setting the initial power level in a forward link based on an interference measure as recited in independent claims 1, 9, and 21.

Applicants have already explained why Love fails to teach or suggest the limits of independent claims 1, 9, and 21. Additionally, Meidan fails to teach or suggest the lacking features in Love. Therefore, since claims 7, 14, and 26 each depend, either directly or indirectly, from one of claims 1, 9, and 21, claims 7, 14, and 26 are allowable at least for the reasons generally expressed above with respect to claims 1 and 21 with respect to Love.

Accordingly applicants respectfully request reconsideration and withdrawal of the outstanding rejection of claims 7, 14, and 26 under 35 U.S.C. § 103(a).

#### 4. Rejection under 35 U.S.C. § 103 (a) based on Love + Nakano + Meidan

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Love in view of Nakano as applied to claims 16-17 and further in view of Meidan. This rejection is respectfully traversed.

Applicants have already explained why Love fails to teach or suggest the limits of independent claim 15. Additionally, Nankano and Meidan fail to teach or suggest the lacking features in Love. Therefore, since claim 20 depends, either directly or indirectly, from claim 15, claim 20 is allowable at least for the reasons generally expressed above with respect to claim 15 with respect to Love.

Accordingly applicants respectfully request reconsideration and withdrawal of the outstanding rejection of claim 20 under 35 U.S.C. § 103(a).

### CONCLUSION

In view of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the formal objections and rejections to the claims, and the rejections based on prior art. Because all claims are believed to define over prior art of record, Applicants respectfully request an early indication of allowability.

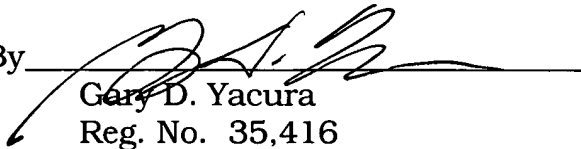
If the Examiner has any questions concerning this application, the Examiner is requested to contact the undersigned at (703) 668-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayments to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Very truly yours,

HARNESS, DICKEY & PIERCE, P.L.C.

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